BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

DANNY L. LAMB Claimant VS. THE BOEING COMPANY - WICHITA Respondent AND O O O O O O O O O O O O O	Docket No. 199,877
AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY Insurance Carrier AND	
KANSAS WORKERS COMPENSATION FUND	

ORDER

Respondent appeals from a Preliminary Hearing Order of May 11, 1995, wherein Administrative Law Judge John D. Clark granted claimant benefits, finding claimant had suffered accidental injury arising out of and in the course of his employment and further finding claimant had provided proper notice and written claim as required by statute.

<u>ISSUES</u>

- (1) Whether claimant met with accidental injury arising out of and in the course of his employment with respondent on the date alleged;
- (2) Whether claimant provided notice to respondent pursuant to K.S.A. 44-520:
- (3) Whether claimant provided timely written claim to the respondent pursuant to K.S.A. 44-520a.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds the issues enumerated above are listed in K.S.A. 44-534a as appealable from preliminary hearings and, thus, the Appeals Board has jurisdiction to consider this matter.

Claimant alleges injury on April 15, 1994 with aggravation through the present to his right hip, right shoulder and left shoulder. Claimant further alleged aggravation on February 3, 1995 to the left shoulder.

Claimant suffered injury on April 15, 1994 when he fell into a hole in the floor striking his right side, hip and shoulder. He advised his supervisor that he had injured his right hip, his right shoulder and his left shoulder, although the pain in the left shoulder was less than that experienced on the right.

Claimant contends further aggravation through April 1995. Medical records in December 1994 and January 1995 support claimant's contention that he was having additional problems with the left shoulder, including what appears to be an additional, sudden onset of pain in December 1994, rendering claimant unable to use the left arm after the incident. Claimant's left shoulder appeared to progressively worsen.

Claimant's contentions that he advised his supervisor of all of his problems, including the left shoulder, while controverted by the respondent, were not controverted by testimony of any witness on behalf of the respondent and appear to be supported by the medical records.

K.S.A. 44-501 and K.S.A. 44-508(g) make it claimant's burden to prove by a preponderance of the credible evidence that his contentions are more probably true than not true based upon the entire record. The Appeals Board finds the testimony provided by claimant coupled with the medical evidence satisfies claimant's burden of proof that he suffered accidental injury arising out of and in the course of his employment to his right hip, right shoulder and left shoulder and that claimant provided both notice and written claim to the respondent in a timely fashion. As such, the Appeals Board finds the Order of John D. Clark dated May 11, 1995 is appropriate and it is affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated May 11, 1995 is affirmed in all respects.

IT IS SO ORD	ERED.	
Dated this	_ day of August 1995.	
	BOARD MEMBER	
	BOARD MEMBER	

BOARD MEMBER

c: David Farris, Wichita, KS
Eric K. Kuhn, Wichita, KS
Steven L. Foulston, Wichita, KS
John D. Clark, Administrative Law Judge
David Shufelt, Acting Director